

1 **INTIMATE IMAGE DISTRIBUTION PROHIBITION**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Kwan**

5 Senate Sponsor: Todd D. Weiler

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9	James A. Dunnigan	Adam Robertson	
10	Sandra Hollins	Angela Romero	
	Brian S. King		

12 **LONG TITLE**

13 **General Description:**

14 This bill creates the offense of the unlawful distribution of a counterfeit intimate image.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ creates the offense of unlawful distribution of a counterfeit intimate image;
- 19 ▶ creates the offense of aggravated unlawful distribution of a counterfeit intimate
- 20 image; and
- 21 ▶ imposes penalties.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 [77-36-1](#), as last amended by Laws of Utah 2020, Chapter 142

29 ENACTS:

30 [76-5b-205](#), Utah Code Annotated 1953

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [76-5b-205](#) is enacted to read:

34 **[76-5b-205](#). Unlawful distribution of a counterfeit intimate image -- Penalty.**

35 (1) As used in this section:

36 (a) "Child" means an individual under the age of 18.

37 (b) "Counterfeit intimate image" means any visual depiction, photograph, film, video,
38 recording, picture, or computer or computer-generated image or picture, whether made or
39 produced by electronic, mechanical, or other means, that has been edited, manipulated, or
40 altered to depict the likeness of an identifiable individual and purports to, or is made to appear
41 to, depict that individual's:

42 (i) exposed human male or female genitals or pubic area, with less than an opaque
43 covering;

44 (ii) a female breast with less than an opaque covering, or any portion of the female
45 breast below the top of the areola; or

46 (iii) the individual engaged in any sexually explicit conduct or simulated sexually
47 explicit conduct.

48 (c) "Distribute" means the same as that term is defined in Section [76-5b-203](#).

49 (d) "Sexually explicit conduct" means the same as that term is defined in Section
50 [76-5b-203](#).

51 (e) "Simulated sexually explicit conduct" means the same as that term is defined in
52 Section [76-5b-203](#).

53 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate
54 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
55 actor knows or should reasonably know would cause a reasonable person to suffer emotional or

56 physical distress or harm, if:

57 (a) the actor has not received consent from the depicted individual to distribute the
58 counterfeit intimate image; and

59 (b) the counterfeit intimate image was created or provided by the actor without the
60 knowledge and consent of the depicted individual.

61 (3) An individual commits aggravated unlawful distribution of a counterfeit intimate
62 image if, in committing the offense described in Subsection (2), the individual depicted in the
63 counterfeit intimate image is a child.

64 (4) This section does not apply to:

65 (a) (i) lawful practices of law enforcement agencies;

66 (ii) prosecutorial agency functions;

67 (iii) the reporting of a criminal offense;

68 (iv) court proceedings or any other judicial proceeding; or

69 (v) lawful and generally accepted medical practices and procedures;

70 (b) a counterfeit intimate image if the individual portrayed in the image voluntarily
71 allows public exposure of the image;

72 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

73 (d) a counterfeit intimate image that is related to a matter of public concern or interest
74 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
75 and 15 of the Utah Constitution.

76 (5) (a) This section does not apply to an Internet service provider or interactive
77 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
78 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
79 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
80 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
81 in 47 U.S.C. Sec. 522, if:

82 (i) the distribution of a counterfeit intimate image by the Internet service provider
83 occurs only incidentally through the provider's function of:

84 (A) transmitting or routing data from one person to another person; or

85 (B) providing a connection between one person and another person;

86 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
87 intimate image; and

88 (iii) the provider does not knowingly receive from or through a person who distributes
89 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
90 specific condition for permitting the person to distribute the counterfeit intimate image.

91 (b) This section does not apply to a hosting company, as defined in Section
92 76-10-1230, if:

93 (i) the distribution of a counterfeit intimate image by the hosting company occurs only
94 incidentally through the hosting company's function of providing data storage space or data
95 caching to a person;

96 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
97 of the counterfeit intimate image;

98 (iii) the hosting company does not knowingly receive from or through a person who
99 distributes the counterfeit intimate image a fee greater than the fee generally charged by the
100 provider, as a specific condition for permitting the person to distribute, store, or cache the
101 counterfeit intimate image; and

102 (iv) the hosting company immediately removes the counterfeit intimate image upon
103 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly
104 depicted in the counterfeit intimate image.

105 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
106 section if it complies with Section 76-10-1231.

107 (6) This section does not apply to an actor who engages in conduct that constitutes a
108 violation of this section to the extent that the actor is chargeable, for the same conduct, under
109 Section 76-5b-201, sexual exploitation of a minor.

110 (7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful
111 distribution of a counterfeit intimate image is a class A misdemeanor.

112 (b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a
113 third degree felony on a second or subsequent conviction for an offense under this section that
114 arises from a separate criminal episode as defined in Section [76-1-401](#).

115 (c) Except as provided in Subsection (7)(d), knowing or intentional aggravated
116 unlawful distribution of a counterfeit intimate image is a third degree felony.

117 (d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate
118 image is a second degree felony on a second or subsequent conviction for an offense under this
119 section that arises from a separate criminal episode as defined in Section [76-1-401](#).

120 Section 2. Section **77-36-1** is amended to read:

121 **77-36-1. Definitions.**

122 As used in this chapter:

123 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

124 (2) "Department" means the Department of Public Safety.

125 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter
126 3, Divorce.

127 (4) "Domestic violence" or "domestic violence offense" means any criminal offense
128 involving violence or physical harm or threat of violence or physical harm, or any attempt,
129 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,
130 when committed by one cohabitant against another. "Domestic violence" or "domestic
131 violence offense" includes commission or attempt to commit, any of the following offenses by
132 one cohabitant against another:

133 (a) aggravated assault, as described in Section [76-5-103](#);

134 (b) aggravated cruelty to an animal, as described in Subsection [76-9-301](#)(4), with the
135 intent to harass or threaten the other cohabitant;

136 (c) assault, as described in Section [76-5-102](#);

137 (d) criminal homicide, as described in Section [76-5-201](#);

138 (e) harassment, as described in Section [76-5-106](#);

139 (f) electronic communication harassment, as described in Section [76-9-201](#);

- 140 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections
141 76-5-301, 76-5-301.1, and 76-5-302;
- 142 (h) mayhem, as described in Section 76-5-105;
- 143 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and
144 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 145 (j) stalking, as described in Section 76-5-106.5;
- 146 (k) unlawful detention or unlawful detention of a minor, as described in Section
147 76-5-304;
- 148 (l) violation of a protective order or ex parte protective order, as described in Section
149 76-5-108;
- 150 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property
151 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,
152 Part 3, Robbery;
- 153 (n) possession of a deadly weapon with criminal intent, as described in Section
154 76-10-507;
- 155 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any
156 person, building, or vehicle, as described in Section 76-10-508;
- 157 (p) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly
158 conduct is the result of a plea agreement in which the defendant was originally charged with a
159 domestic violence offense otherwise described in this Subsection (4), except that a conviction
160 of disorderly conduct as a domestic violence offense, in the manner described in this
161 Subsection (4)(p), does not constitute a misdemeanor crime of domestic violence under 18
162 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;
- 163 (q) child abuse, as described in Section 76-5-109.1;
- 164 (r) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 165 (s) threatening violence, as described in Section 76-5-107;
- 166 (t) tampering with a witness, as described in Section 76-8-508;
- 167 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;

- 168 (v) unlawful distribution of an intimate image, as described in Section [76-5b-203](#), or
169 unlawful distribution of a counterfeit intimate image, as described in Section [76-5b-205](#);
- 170 (w) sexual battery, as described in Section [76-9-702.1](#);
- 171 (x) voyeurism, as described in Section [76-9-702.7](#);
- 172 (y) damage to or interruption of a communication device, as described in Section
173 [76-6-108](#); or
- 174 (z) an offense described in Subsection [78B-7-806\(1\)](#).
- 175 (5) "Jail release agreement" means the same as that term is defined in Section
176 [78B-7-801](#).
- 177 (6) "Jail release court order" means the same as that term is defined in Section
178 [78B-7-801](#).
- 179 (7) "Marital status" means married and living together, divorced, separated, or not
180 married.
- 181 (8) "Married and living together" means a couple whose marriage was solemnized
182 under Section [30-1-4](#) or [30-1-6](#) and who are living in the same residence.
- 183 (9) "Not married" means any living arrangement other than married and living together,
184 divorced, or separated.
- 185 (10) "Protective order" includes an order issued under Subsection [78B-7-804\(3\)](#).
- 186 (11) "Pretrial protective order" means a written order:
- 187 (a) specifying and limiting the contact a person who has been charged with a domestic
188 violence offense may have with an alleged victim or other specified individuals; and
- 189 (b) specifying other conditions of release under Sections [78B-7-802](#) or [78B-7-803](#),
190 pending trial in the criminal case.
- 191 (12) "Sentencing protective order" means a written order of the court as part of
192 sentencing in a domestic violence case that limits the contact a person who has been convicted
193 of a domestic violence offense may have with a victim or other specified individuals under
194 Section [78B-7-804](#).
- 195 (13) "Separated" means a couple who have had their marriage solemnized under

196 Section 30-1-4 or 30-1-6 and who are not living in the same residence.

197 (14) "Victim" means a cohabitant who has been subjected to domestic violence.